APPEAL NO. 031832
FILED AUGUST 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 10, 2003. With regard to the only issue before him, the hearing officer determined that the appellant's (claimant) injury occurred while he was in a state of intoxication as defined in Section 401.013 and, thus, the respondent (carrier) was relieved of liability for compensation. In his appeal, the claimant argues that the hearing officer erred in determining that he was intoxicated at the time of his injury. In its response, the carrier urges affirmance.

DECISION

Affirmed.

The claimant was a connector at the employer's steel construction company. It is undisputed that around noon on _____, the claimant was severely injured when the end of a steel beam he was attempting to connect struck him in the face knocking him to the ground 35 feet below. The claimant was taken to the hospital and a routine urine drug screen taken after the accident was positive for the marijuana metabolite (THC). A subsequent quantitative drug test showed a level of 264 nanograms per milliliter (ng/ml) of THC. A peer review doctor's report stated that the level of THC was "consistent with TWCC definition of intoxication, Section 401.013." The claimant sought to show that he was not intoxicated through his testimony and the testimony/statements of coworkers and another toxicologist.

Section 406.032(1)(A) provides that an insurance carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. The definition of intoxication in Section 401.013(a) includes the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance. The law presumes that a claimant was sober at the time of an injury; however, the carrier can, with probative evidence of intoxication, rebut this presumption and shift the burden to the claimant to prove that he was not intoxicated. Texas Workers' Compensation Commission Appeal No. 91018, decided September 19, 1991; Texas Workers' Compensation Commission Appeal No. 94247, decided April 12, 1994. In Texas Workers' Compensation Commission Appeal No. 92224, decided July 16, 1992, a marijuana intoxication case involving disparate results in blood and urine tests, the Appeals Panel stated as follows:

> [W]e have never held nor implied that a carrier must present scientific evidence and/or expert testimony in order to raise the intoxication exception. That does not detract from the matter that evidence offered to raise the issue of intoxication and erase the presumption of sobriety thereby shifting the burden back to claimant, must have some probative

> value and not be so weak as to be meaningless or amount to no more than a mere scintilla.
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> The Appeals Panel has often recognized that a positive urinalysis test result will generally suffice to shift the burden of proof to a claimant to establish that he or she was not intoxicated at the time of the injury. See Texas Workers' Compensation Commission Appeal No. 991476 decided August 24, 1999 (unpublished), and cases cited therein.

In this instance, the positive drug screen taken in the hospital after the accident, the quantitative testing establishing the 264 ng/ml metabolite level, and the opinion from the peer review doctor are sufficient to shift the burden to the claimant to prove that he was not intoxicated. Thus, the hearing officer did not err in shifting the burden to the claimant to show that he had the normal use of his mental and physical faculties at the time of his injury. The claimant attempted to do so through his own testimony, that of a toxicologist, and testimony from a coworker, which the hearing officer was free to accept or reject. Nothing in our review of the record reveals that the hearing officer's determination that the claimant did not have the normal use of his mental and physical faculties at the time of his injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse the hearing officer's intoxication determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Although another fact finder may have drawn different inferences from the evidence, which would have supported a different result, that fact does not provide a basis for us to reverse the hearing officer's decision on appeal. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge